

Message Text

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ACTION EB-08

INFO OCT-01 EUR-12 ISO-00 STR-07 L-03 H-01 AID-05
CIAE-00 FRB-03 INR-10 NSAE-00 ICA-11 TRSE-00
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FM AMEMBASSY BUDAPEST

TO SECSTATE WASHDC 1864

INFO USDOC WASHDC

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E.O.11652: N/A

TAGS: EEWT, HU

SUBJECT: NACA PATENT COMPLAINT AGAINST HUNGARY

REF: A) BUDAPEST 2547, B) STATE 167347

1. SUMMARY. ON JUNE 28, MONSANTO REPS REPORTED TO COMOFF STATUS OF THEIR TALKS WITH HUNGARIANS ON PATENT INFRINGEMENT PROBLEM. REPS VOICED CONCERN OVER PERCEIVED HUNGARIAN PATENT OFFICE DISCRIMINATION AGAINST WESTERN CHEMICAL MANUFACTURERS IN GRANTING OF COMPOSITION PATENTS FOR CHEMICAL PRODUCTS, DUMPING THREATS FROM CHEMOLIMPEX FTO, AND OTHER QUESTIONABLE BUSINESS PRACTICES ON PART OF HUNGARIAN CHEMICAL AND PHARMACEUTICAL ENTERPRISES. REPS NOTED THAT IF SUCH PRACTICES CONTINUE, MONSANTO WILL LOBBY AGAINST RENEWAL OF U.S.-HUNGARIAN TRADE AGREEMENT. END SUMMARY.

2. MONSANTO'S DIRECTOR FOR EUROPE/AFRICA (BRUSSELS OFFICE), HERMAN FONTEYNE AND DIRECTOR FOR ENGINEERING (ST. LOUIS OFFICE), ROBERT WEBBER, CALLED ON COMOFF JUNE 28 TO REPORT STATUS OF THIS WEEK'S PATENT INFRINGEMENT DISCUSSIONS WITH HUNGARIAN CHAMBER OF

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COMMERCE, FTO, AND ENTERPRISE OFFICIALS. FONTEYNE MENTIONED THAT THREE MONSANTO TEAMS WERE VISITING THIS WEEK: ONE EXPLORING PRODUCTION COOPERATION ARRANGEMENTS, ANOTHER SEEKING POSSIBLE HUNGARIAN MANUFACTURED CHEMICALS IT MIGHT PURCHASE FOR MONSANTO'S PLANTS AROUND THE WORLD, AND STILL ANOTHER DISCUSSING PATENT INFRINGEMENT PROBLEMS. THE PATENT INFRINGEMENT

TEAM, OF WHICH FONTEYNE AND WEBBER WERE A PART, MET ON JUNE 27 WITH THE VICE PRESIDENT OF THE HUNGARIAN CHAMBER, REPRESENTATIVES OF CHEMOLIMPEX FTO, EXECUTIVES OF THE PRODUCING ENTERPRISES NIROKEMIA AND ALKOLOIDA, AND THE PATENT LAWYER FOR THESE FIRMS.

3. ACCORDING TO FONTEYNE, THE PARTIES SOUGHT TO CLARIFY THEIR POSITIONS DURING THE JUNE 27 MEETING. MONSANTO CLAIMED THAT BEFORE THE PATENT OFFICE MADE A DECISION ON ITS APPLICATION FOR A PATENT ON THE COMPOSITION AND METHOD OF USING GLYPHOSATE, ALKALOIDA AND NITROKEMIA BEGAN TO MANUFACTURE THIS PRODUCT AND EXPORT IT WITH PATENT DISCLAIMER CLAUSES TO PURCHASERS FROM OTHER COUNTRIES WHERE MONSANTO ENJOYS PATENT RIGHTS. MONSANTO CHALLENGED THE HUNGARIAN PARTIES' CONTENTION THAT HUNGARIAN LAW MAKES NO PROVISIONS FOR THE PATENTING OF PRODUCTS CREATED BY CHEMICAL REACTIONS. MONSANTO, AS IT HAD DONE PREVIOUSLY, OFFERED TO LICENSE THE PRODUCTION OF GLYPHOSATE BY HUNGARIAN FIRMS IF GRANTED PATENT PROTECTION FOR THIS PRODUCT IN HUNGARY. (DETAILS OF MONSANTO'S POSITION ON THIS MATTER ARE INCLUDED AMONG MATERIALS FONTEYNE GAVE EMBASSY. EMBASSY WILL POUCH COPIES OF THESE ON JUNE 30.)

4. FONTEYNE ESTIMATED THAT MONSANTO'S OFFER TO LICENSE HUNGARY'S PRODUCTION OF GLYPHOSATE IN EXCHANGE FOR LIMITED OFFICIAL USE

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PATENT PROTECTION WOULD BE WORTH A SAVINGS OF US \$10-12 MILLION IN PURCHASES WHICH CHEMOLIMPEX WOULD NORMALLY MAKE FROM MONSANTO. HE SAID, THOUGH, THAT CHEMOLIMPEX'S MANAGER FOR AGRICULTURAL CHEMICALS RESPONDED TO THIS OFFER WITH A COUNTERPROPOSAL THAT MONSANTO PURCHASE US \$12 MILLION FROM CHEMOLIMPEX. ACCORDING TO WEBBER, CHEMOLIMPEX WOULD LIKE MONSANTO TO PURCHASE HIGH-COST, LOW-PRODUCTION HUNGARIAN MANUFACTURED CORN ROOT-WORM INSECTICIDE. MONSANTO REFUSED THIS OFFER BECAUSE SIMILAR HIGH-VOLUME LOW-COST INSECTICIDE MAY BE PURCHASED IN THE U.S.

5. FONTEYNE SAID THAT MONSANTO'S LICENSING OFFER REMAINS. HE ALSO MENTIONED THAT HE PROPOSED THAT THE HUNGARIAN PARTIES' PATENT LAWYER, WHO INCIDENTALLY IS ALSO A CHEMIST, AND MONSANTO'S PATENT LAWYER MEET TO DISCUSS THE POSITIONS OF THEIR CLIENTS.

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6. FONTEYNE SAID WHILE DISCUSSING MONSANTO'S PATENT INFRINGEMENT PROBLEM WITH REPRESENTATIVES OF AMERICAN CYNAMID, DUPONT, AND FMC, MONSANTO REPRESENTATIVES RECOGNIZED A PATTERN OF QUESTIONABLE BEHAVIOR COMMON TO HUNGARIAN PHARMACEUTICAL AND CHEMICAL FIRMS. FONTEYNE SAID THAT IN MANY CASES, A HUNGARIAN ENTERPRISE WILL PURCHASE A CHEMICAL FROM A WESTERN FIRM UNTIL IT DEVELOPS ITS OWN CAPACITY TO PRODUCE IT. WHEN THERE IS COMMERCIAL EXPORT VALUE IN A CHEMICAL FOR WHICH A WESTERN FIRM SEEKS A PATENT, HUNGARIAN FIRMS WILL OPPOSE THE APPLICATION. IN SOME INSTANCES HUNGARIAN FIRMS WILL OBTAIN COMPOSITION PATENTS FOR CHEMICALS WITHOUT OPPOSITION FROM OTHER HUNGARIAN FIRMS. WHEN A WESTERN FIRM SEEKS A COMPOSITION PATENT, AS DOES MONSANTO CURRENTLY, HUNGARIAN FIRMS WILL CHALLENGE ON THE GROUNDS THAT SUCH PATENTS ARE NOT COVERED BY HUNGARIAN LAW.

7. FONTEYNE EXPRESSED CONCERN OVER WHAT APPEARED TO HIM TO BE EXPLICIT DUMPING THREATS BY CHEMOLIMPEX. FOR EXAMPLE, WHEN RESPONDING TO MONSANTO'S OFFER TO LICENSE PRODUCTION OF GLYPHOSATE IN HUNGARY, CHEMOLIMPEX'S AGRICULTURAL CHEMICALS MANAGER, JYULA SIEGLER, ALLEGEDLY INFORMED MONSANTO TEAM THAT MONSANTO HAD ESSENTIALLY TWO CHOICES:
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-) ENTER INTO A COOPERATION AGREEMENT WITH CHEMOLIMPEX IN WHICH MONSANTO WOULD TAKE PURCHASES FROM HUNGARY, OR, B) DO NOT TAKE PURCHASES FROM HUNGARY AND SUFFER

BELOW MARKET PRICING OF HUNGARIAN CHEMICAL PRODUCTS ON MARKETS IN THE U.S. AS WELL AS OTHER PARTS OF THE WORLD. FONTEYNE SAID THAT SIEGLER COMPARED MONSANTO'S CURRENT POSITION VIS-A-VIS CHEMOLIMPEX TO AN ENCOUNTER SIEGLER ONCE EXPERIENCED IN SAN FRANCISCO. WHEN HE APPROACHED A LARGE BLACK MAN FOR CHANGE FOR A FIVE-DOLLAR BILL, THE MAN OFFERED HIM A DIME. WHEN HE REALIZED HE WAS IN DANGER, HE TOOK THE DIME AND GAVE THE MAN THE FIVE DOLLARS. ACCORDING TO FONTEYNE, SIEGLER STATED THAT HE WAS ESSENTIALLY OFFERING MONSANTO A DIME.

8. FONTEYNE ADDED THAT FOLLOWING OBSERVATIONS OF SIMILAR EXPERIENCES ON THE PART OF AMERICAN AND EUROPEAN CHEMICAL AND PHARMACEUTICAL FIRMS DOING BUSINESS IN HUNGARY, MONSANTO AND OTHER AMERICAN FIRMS APPROACHED THE NATIONAL AGRICULTURAL CHEMICAL ASSOCIATION (NACA) TO ORGANIZE A CONCERTED EFFORT TO INFORM THE CONGRESS, EXECUTIVE BRANCH AGENCIES AND SUCH ORGANIZATIONS AS THE WORLD ASSOCIATION OF PESTICIDE MANUFACTURERS, TOGETHER WITH THE SIMILAR INTERNATIONAL ASSOCIATIONS OF CHEMICAL AND PHARMACEUTICAL MANUFACTURERS, OF HUNGARIAN CHEMICAL MANUFACTURERS' QUESTIONABLE BUSINESS TACTICS. THE NACA, WHILE IT DID NOT OPPOSE THE APPROVAL OF THE TRADE AGREEMENT, WILL MONITOR HUNGARIAN ENTERPRISES' BUSINESS PRACTICES AND IF QUESTIONABLE PRACTICES CONTINUE THEY WILL PROBABLY OPPOSE THE AGREEMENT'S RENEWAL. IN THIS CONNECTION, THE NACA HAS ALREADY CONTACTED SENATORS RIBICOFF, PACKWOOD, BYRD, LONG, HANSEN AND DNAFORTH.

9. FONTEYNE AND WEBBER SAID THEY WOULD KEEP EMBASSY LIMITED OFFICIAL USE

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INFORMED OF STATUS OF MONSANTO'S DISCUSSIONS WITH HUNGARIANS. ALTHOUGH THEY MADE NO SPECIFIC REQUEST FOR ASSISTANCE IN THIS INSTANCE, EMBASSY WILL DISCUSS THIS ISSUE WITH CHAMBER OFFICIALS IN A LOW-KEY MANNER AND ENCOURAGE JUST SOLUTION TO PATENT INFRINGEMENT PROBLEM. EMBASSY WILL ALSO REMIND THEM OF DANGER OF PRACTICES WHICH MIGHT BRING ABOUT CHARGES OF DUMPING AND MARKET DISRUPTION AGAINST HUNGARIAN MANUFACTURERS. SINCE THE EMBASSY IS NOT ABLE TO DETERMINE THE RELATIVE MERITS OF MONSANTO'S AND HUNGARAN COMPANIES' CLAIMS, WE INTEND TO CONFINE OUR REPRESENTATION TO URGING AN AMICABLE SETTLEMENT OF THIS COMMERCIAL DISPUTE. IN THIS CONNECTION, WE INTEND TO URGE THE CONTINUED USE OF THE GOOD OFFICES OF THE HUNGARIAN CHAMBER OF COMMERCE, WHICH ALSO, IN OUR OPINION, DESIRES AN AMICABLE SETTLEMENT. ABOVE MINIMAL ACTIONS WILL BE TAKEN IN ACCORDANCE WITH MONSANTO'S WISHES AS EXPRESSED IN REF B. KAISER

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